

HONOURABLE SRI JUSTICE J. CHELAMESWAR

AND

HONOURABLE SRI JUSTICE P. SWAROOP REDDY

WRIT PETITION No.15668 OF 2006

DATE: -03-2007

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Between:

K. Raja Rao, S/o. K. Isac,
aged 45 years, R/o.D.No.26-39-73,
Sree Nilayam, 7th Line,
A.T. Agraharam, Guntur.

.. Petitioner

And

Union of India
Rep. by its Secretary
Ministry of Finance,
Department of Revenue,
New Delhi & 3 others

.. Respondents

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ORDER: (Per Hon'ble Sri Justice P. Swaroop Reddy)

This Writ Petition is filed by the unsuccessful petitioner before the Administrative Tribunal in O.A. No.134 of 2006.

2. The relevant facts, in brief, are as under:

Petitioner joined as Inspector in the Department of Customs and Central Excise in 1985 and was promoted to the post of Superintendent in the year 1994. According to him, he enjoyed unblemished record of service and was discharging his service

efficiently and diligently.

On 12-11-2001, he was served with a memorandum dated 07-11-2001 issued by the Commissioner of Central Excise, Guntur directing him to submit his statement of defence against a proposed enquiry. As per the charge memo, while the petitioner was working as Superintendent, Customs, Inland Container Depot, Guntur, on 12-11-1999, he demanded illegal gratification of Rs.1,00,000/- for himself and Rs.10,00,000/- for Dr. S.N. Busi, the then Commissioner of Customs and Central Excise, Guntur from one Irfan Sheriff, partner of M/s. Sheriff & Sons, Customs House Clearing Agents, Guntur/Chennai, for renewal of their Custom House Licence. Though, the alleged incident has taken place on 12-11-1999, no steps were taken till

07-11-2001. Not even preliminary enquiry was conducted in support of the allegation against the petitioner and the charge memo is incomplete on several aspects and copies of the documents were also not furnished to him. On 19-11-2001, petitioner submitted a representation to the Disciplinary Authority to arrange for supply of the copies of the documents. After repeated requests by the petitioner,

on 25-02-2002 i.e. after more than three and half months, he was supplied with only copies of certain documents without supplying the material like cassettes in which some conversation was said to have been recorded. Petitioner could not submit his written statement for want of all the material.

In the meanwhile, enquiry was initiated against him. Petitioner submitted his statement of defence on 14-02-2003.

On account of several omissions and commissions on the part of the disciplinary authority, petitioner requested the disciplinary

authority to withdraw the enquiry and requested for a personal hearing, but the same was not considered.

An enquiry was held against him without following the proper procedure and he was imposed a major penalty of removal from service, which is erroneous and illegal.

3. The Administrative Tribunal disposed of the O.A. observing as under:

“2. In this matter, the appeal has already been filed on 9.7.2005, which has not been disposed of. The learned Counsel for the Applicant wanted to argue (Sic. argue) in alternative (Sic. alternative) remedy. But today, no one has appeared for the applicant.

3. In view of the fact that the appeal has already been filed by the applicant on 9.7.2005 and the applicant has already had recourse to the alternative remedy. We are not inclined to entertain this application and the application is disposed of accordingly with no order as to cost.”

4. Thus, the Administrative Tribunal disposed of the O.A. as there was no representation on behalf of the petitioner and in view of the filing of an appeal by him.

5. Now the learned counsel for the petitioner contends that as provided under Sections 20(2)(b) of Administrative Tribunals Act, in case, no orders are passed within a period of six months, the petitioner is not precluded from filing O.A. and that the learned Tribunal has erroneously dismissed the O.A.

6. Obviously, as there was no representation on behalf of

the petitioner in the O.A. to bring to the notice of the Tribunal about the lapse of six months since the date of filing of the appeal, the Tribunal has apparently disposed of the O.A.

7. As contended by the learned counsel for the petitioner, in view of the provisions of Sections 20(2)(b) of Administrative Tribunals Act, O.A. is maintainable, hence the disposal of the same by the impugned order is liable to be set aside. However, we do not intend to decide the matter on merits as of the Court of first instance, the appeal is desirable to be remitted to the Tribunal for fresh disposal on merits.

8. Accordingly, the impugned order in O.A. No.134 of 2006 dated 29-03-2006 is set aside, the O.A. is remitted to the Administrative Tribunal directing it to restore the same to file and dispose of on merits.

The Writ Petition is accordingly ordered. No order as to costs.

J. CHELAMESWAR, J

March _____, 2007

P. SWAROOP REDDY, J

PV